SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 15 2016
ARTHUR JOHNSTON
BY ______ DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

KENYETTA STALLINGS **PLAINTIFF**

v. **CIVIL ACTION NO.** 3:16-cv-963 HTW-LRA

**ANN MERRITT MOORE, AND
XYZ CORPORATIONS 1-10** **DEFENDANTS**

NOTICE OF REMOVAL

INTRODUCTION

1.

In accordance with 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Ann Merritt Moore, gives notice that she removes Civil Action No. 16-610 from the Circuit Court of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi, Northern Division, because there is complete diversity between the parties and because the amount in controversy exceeds $75,000. Defendant Ann Merritt Moore respectfully submits the following in support of removal.

BACKGROUND OF CIVIL ACTION REMOVED

2.

On October 17, 2016, Plaintiff Kenyetta Stallings filed an action pertaining to an automobile accident styled in the following manner: *Kenyetta Stallings v. Ann Merritt Moore, Mississippi Farm Bureau Casualty Insurance Company, and XYZ Corporations 1-10*; Civil Action No. 16-610; in the Circuit Court of the First Judicial District of Hinds County, Mississippi.[1]

[1] *See* Compl., Oct. 17, 2016, Ex. A.

Plaintiff Kenyetta Stallings served Ann Merritt Moore with the Complaint on November 2, 2016. The Complaint alleges that on or about October 22, 2013, Defendant Ann Merritt Moore's vehicle contacted a golf cart occupied by Plaintiff Kenyetta Stallings in Oktibbeha County, Mississippi.[2]

3.

On November 16, 2016, Plaintiff Kenyetta Stallings filed a Stipulation of Dismissal as to then-Defendant Mississippi Farm Bureau Casualty Insurance Company.[3]

4.

On November 21, 2016, Defendant Ann Merritt Moore filed her Answer and Affirmative Defenses to Plaintiff's Complaint.[4]

COPY OF STATE COURT PROCEEDINGS

5.

In accordance with 28 U.S.C. § 1446(a), a true and correct copy of the certified record of proceedings from the Circuit Court of Hinds County is attached as Exhibit "A" and is specifically incorporated by reference.

THERE IS COMPLETE DIVERSITY BETWEEN THE PARTIES

6.

Plaintiff Kenyetta Stallings alleges she is an adult resident of Noxubee County, Mississippi.[5]

7.

On the date of the filing of suit, Defendant Ann Merritt Moore was domiciled in Fort Worth, Texas.

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[2] *Id.*
[3] *See* Stipulation of Dismissal, Nov. 16, 2016, Ex. A.
[4] *See* Answer, Nov. 21, 2016, Ex. A.
[5] *See* Compl., Oct. 17, 2016, Ex. A.

8.

Therefore, under 28 U.S.C. § 1332, there is complete diversity of citizenship between Plaintiff Kenyetta Stallings and Defendant Ann Merritt Moore.

THE AMOUNT IN CONTROVERSY EXCEEDS $75,000

9.

Plaintiff Kenyetta Stallings's Complaint does not specify the amount of damages sought against Defendant Ann Merritt Moore, nor does it include a claim for punitive damages against Defendant Ann Merritt Moore. The most the Complaint states in the way of damages sought is the following ambiguous paragraph:

> The Defendant, Ann Merritt Moore, negligently operated the vehicle in question that proximately caused the collision, and was an "underinsured" motorist within the meaning of Mississippi law, as the Defendant's bodily injury liability limits are capped at an undetermined amount and/or less than $75,000; meaning that the Plaintiff was injured due to the negligence of an "underinsured" motorist.[6]

10.

On November 21, 2016, Defendant Ann Merritt Moore served her First set of Requests for Admission on Plaintiff Kenyetta Stallings.[7] The requests all concerned the amount in controversy in this matter.[8]

11.

On November 28, 2016, Plaintiff Kenyetta Stallings served her Responses to Defendant Ann Merritt Moore's First set of Requests for Admission.[9] In her Responses to the Requests for Admission, Plaintiff Kenyetta Stallings repeatedly denies that her damages are less than $75,000, exclusive of interest and costs.[10] Based on these denials in the Responses to Requests for Admission, it is now clear that Kenyetta Stallings seeks more than $75,000 in damages from Defendant Ann Merritt Moore, exclusive of costs and interest..

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[6] *See* Compl., Oct. 17, 2016, Ex. A.
[7] *See* Not. Of Service, Nov. 21, 2016, Ex. A.
[8] *See* Requests for Admission, Nov. 21, 2016, Ex. B.
[9] *See* Not. Of Service, Nov. 28, 2016, Ex. A.

12.

In light of the foregoing, the amount in controversy exceeds $75,000, exclusive of costs and interest. The Court therefore has original jurisdiction of this civil action under 28 U.S.C. § 1332, and it may be removed to this Court in accordance with 28 U.S.C. § 1441.

TIMELINESS OF REMOVAL

13.

Thirty days have not elapsed since Defendant Ann Merritt Moore first became aware that federal jurisdiction exists, and thus removal is timely as required by 28 U.S.C. § 1446(b).

VENUE

14.

Venue properly rests in the Northern Division of the United States District Court for the Southern District of Mississippi under 28 U.S.C. § 104(b)(1) because this case is being removed from the Circuit Court of Hinds County, Mississippi, where it was originally filed.[11]

NOTICE TO STATE COURT

15.

Defendant Ann Merritt Moore will immediately file a true and correct copy of this Notice of Removal with the Circuit Court of Hinds County, Mississippi, and effect removal to this Court.

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[10] *See* Responses to Request for Admission, Nov. 28, 2016, Ex. C.

[11] Defendant Ann Merritt Moore previously filed a Motion to Transfer Venue in the Circuit Court of Hinds County, based on the impropriety of venue in that county. That Motion seeks the transfer of venue to either Rankin or Oktibbeha County. Defendant Ann Merritt Moore does not agree that venue is proper in Hinds County, does not consent to venue there, and reserves her arguments as to the transfer of venue to Rankin or Oktibbeha County in the event this matter is remanded to State Court.

In accordance with 28 U.S.C. § 1446(d), no further proceedings shall be had in the Circuit Court of Hinds County, Mississippi unless or until this matter is remanded.

NOTICE TO PLAINTIFF

16.

Consistent with 28 U.S.C. § 1466(d) and Defendant Ann Merritt Moore's Certificate of Service, Plaintiff Kenyetta Stallings is being provided a copy of this Notice of Removal.

CONCLUSION

17.

For the reasons stated above, Defendant Ann Merritt Moore respectfully requests that this Court will receive this Notice of Removal, place it upon the docket of this Court, and that the Circuit Court of Hinds County, Mississippi, will proceed no further in this action unless and until it is remanded.

THIS the 15th day of December, 2016.

Respectfully submitted,

ANN MERRITT MOORE, DEFENDANT

By: ______________________________

DALE G. RUSSELL (MSB # 10837)
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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served a true and correct copy of the foregoing document via United States Mail, postage prepaid, to the following:

Yancy Y. Burns
Burns and Associates, PLLC
P.O. Box 16409
Jackson, MS 39236

THIS, the 15th day of December, 2016.

Adam V. Griffin